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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

In re B.D., a Person Coming Under the
Juvenile Court Law.

B244642
(Los Angeles County
Super. Ct. No. NJ26420)

THE PEOPLE,

Plaintiff and Respondent,

v.

B.D.,

Defendant and Appellant.

APPEAL from an order of the Superior Court of Los Angeles County,
John C. Lawson II, Judge. Affirmed as modified.

Tonja R. Torres, under appointment by the Court of Appeal, for Defendant
and Appellant.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant
Attorney General, Lance E. Winters, Senior Assistant Attorney General, Steven D.
Matthews and Analee J. Brodie, Deputy Attorneys General, for Plaintiff and Respondent.

B.D. appeals from the juvenile court's order declaring her a ward of the court and placing her home on probation after finding she had made a criminal threat and annoying telephone calls. B.D. challenges two of her probation conditions as unconstitutionally vague and overbroad. We affirm the order as modified.

FACTUAL AND PROCEDURAL BACKGROUND

The proceedings arose out of a series of telephone calls B.D., then 15 years old, made to her boyfriend's mother in September 2011, during which she threatened to shoot the mother. B.D. was detained and a Welfare and Institutions Code section 602¹ petition was filed alleging she had made a criminal threat (Pen. Code, § 422) and annoying telephone calls (Pen. Code, § 653m, subd. (b)).

Following a contested jurisdiction hearing, the juvenile court found the allegations true, sustained the petition, and declared B.D. a ward of the court under section 602. At the disposition hearing, the court ordered B.D. placed in the home of her father on probation.

DISCUSSION

B.D. contends probation conditions 21 and 22, as they appear in the preprinted portion of the September 17, 2012 minute order, are unconstitutionally vague and overbroad and require modification

1. Discrepancies Between Minute Order and Oral Pronouncement of Conditions

Preliminarily, we note there are discrepancies in the challenged conditions as they appear in the minute order and as they were orally pronounced by the juvenile court. In the preprinted minute order, condition 21 reads: "Do not use or possess narcotics, controlled substances, poisons, or related paraphernalia; stay away from places where persons whom you know to use illegal drugs or substances congregate." In imposing condition 21, the juvenile court stated, "You are not to drink any alcoholic beverages, narcotics or controlled substances." Condition 22 of the preprinted minute order reads,

¹ Statutory references are to the Welfare and Institutions Code unless otherwise indicated.

“Do not associate with persons known to be users or sellers of narcotics/controlled substances, except with prior written permission of the probation officer.” In imposing condition 22, the juvenile court told B.D. “You are not to associate with persons known to you to be users or sellers.”

While ordinarily an oral pronouncement controls “[w]hen there is a discrepancy between the minute order and the oral pronouncement of judgment” (*People v. Farrell* (2002) 28 Cal.4th 381, 384, fn. 2), this is not an inflexible, “mechanical rule.” (*People v. Smith* (1983) 33 Cal.3d 596, 599.) In some circumstances we may deem a minute order to prevail over the reporter’s transcript. (See *People v. Cleveland* (2004) 32 Cal.4th 704, 768.) Here, we conclude conditions 21 and 22 as set forth in the disposition minute order should prevail over the oral pronouncement as reflecting the conditions the juvenile court intended to impose on B.D. (*Ibid*; see *Smith, supra*, 33 Cal.3d at p. 599.)

2. Conditions 21 and 22 Are Modified as Vague and Overbroad

“[T]he underpinning of a vagueness challenge is the due process concept of ‘fair warning.’” (*In re Sheena K.* (2007) 40 Cal.4th 875, 890.) “A probation condition ‘must be sufficiently precise for the probationer to know what is required of him, and for the court to determine whether the condition has been violated,’ if it is to withstand a challenge on the ground of vagueness. [Citation.] A probation condition that imposes limitations on a person’s constitutional rights must closely tailor those limitations to the purpose of the condition to avoid being invalidated as unconstitutionally overbroad.” (*Ibid.*) If a reviewing court concludes on the merits that a probation condition is unconstitutionally vague and/or overbroad in its literal wording, the reviewing court may modify the condition so as to render it constitutionally sound. (*Id.* at pp. 878, 892.)

With respect to condition 21, B.D. contends, and the People acknowledge, it should be modified to prohibit her from using or possessing narcotics, controlled substances, poisons, or related paraphernalia “without a valid prescription.” We agree condition 21 as it appears in the disposition minute order is ambiguous as to whether B.D. is permitted to use and possess legally prescribed narcotics (for example, hydrocodone (Vicodin) or codeine) or controlled substances (for example,

methylphenidate (Ritalin)). This ambiguity, in certain circumstances, might render it unreasonably difficult for B.D. to know what is required of her, and for her probation officer and the juvenile court to know whether B.D. has violated the terms of her probation.

B.D. contends, and the People do not dispute, condition 22 is vague and overbroad because its prohibition on associating with persons known to be “sellers of narcotics” effectively bars B.D. from contacting a pharmacist. However, rather than modify the probation condition as prohibiting the use of “illegal” narcotics, we believe substituting the words, “to engage in the illegal use or sale of narcotics/controlled substances” after the words “known to be” provides sufficient notice and is sufficiently tailored concerning those persons with whom B.D. may associate, including a pharmacist.

DISPOSITION

Condition 21 of the disposition minute order is modified to read, “Do not use or possess narcotics, controlled substances, poisons, or related paraphernalia without a valid prescription; stay away from places where persons whom you know to use illegal drugs or substances congregate.” Condition 22 of the disposition minute order is modified to read, “Do not associate with persons known to engage in the illegal use or sale of narcotics/controlled substances.” As modified, the order is affirmed.

WOODS, J.

We concur:

PERLUSS, P. J.

ZELON, J.